

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

WP(C).No. 20129 of 2005(U)

AGAINST THE ORDER IN IA.NO.1086/2004 IN OS.403/1999 of
II ADDL.SUB COURT,KOZHIKODE

PETITIONER:

NARAYANAN NAIR, S/O.GOVINDANKUTTY NAIR,
KARUTHEATH HOUSE, P.O.KUNNAMANGALAM,
KUNNAMANGALAM AMSOM DESOM OF KOZHIKODE TALUK.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENTS:

1. THE FEDERAL BANK LTD.,
BRANCH OFFICE IN KASABA AMSOM DESOM,
REPRESENTED BY PRINCIPAL OFFICER OF
KOZHIKODE TALUK.
2. N.SURENDRAN, S/O.VELAYUDHAN,
NADUKANDIYIL HOUSE, KARANTHUR P.O.,
KUNNAMANGALAM AMSOM DESOM OF
KOZHIKODE TALUK.

BY ADV. SRI.MOHAN JACOB GEORGE FOR R1
SMT.P.V.PARVATHI
SMT.REENA THOMAS
SRI.K.N.PRAMOD KUMAR MENON
SRI.DILEEP KUMAR P.T.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

W.P.(C).20129/2005

APPENDIX

PETITIONER'S EXHIBITS

- EXT.P1- TRUE COPY OF THE PETITION I.A.1086/04 IN O.S.403/99 UNDER SECTION 152 OF C.P.C FILED BY THE PETITIONER.
- EXT.P2- CERTIFIED COPY OF THE ORDER DATED 9.12.2004 ISSUED BY THE COURT OF SUBORDINATE JUDGE, KOZHIKODE.

RESPONDENT'S EXHIBITS

- EXT.R1(a)- COPY OF THE PLAINT IN O.S.403/99 OF SUB COURT, KOZHIKODE
- EXT.R1(b)- COPY OF THE JUDGMENT DATED 7.12.2000 IN O.S. 403/99 OF SUB COURT, KOZHIKODE
- EXT.R1(c)- COPY OF THE DECREE PASSED IN O.S.403/99 OF SUB COURT, KOZHIKODE

(TRUE COPY)

P.A TO JUDGE

M.SASIDHARAN NAMBIAR, J.

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W.P.(C)No.20129 OF 2005

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DATED THIS THE 5th DAY OF JANUARY, 2007

JUDGMENT

Petitioner is the first defendant in O.S.403 of 1999 on the file of Sub Court, Kozhikode. First respondent is the plaintiff. The suit was filed seeking a decree for realisation of Rs.6,78,509.45 with interest at 21.42% with quarterly rests by the sale of the mortgaged properties. As per judgment dated 7.12.2000, suit was decreed allowing plaintiff to realise the same with interest at 21.41% with quarterly rests from the date of the suit till realisation by sale of the plaint schedule properties. Petitioner thereafter filed I.A.1086 of 2004, an application under Section 152 of the Code of Civil Procedure to amend the decree and judgment contending that instead of 6% interest, by mistake the court awarded future interest at 21.42% and therefore it is to be corrected. Under Ext.P2 order learned Sub Judge dismissed the application. It is challenged in this petition filed under Article 227 of the Constitution of India.

2. Learned counsel appearing for petitioner and first respondent were heard.

3. The argument of the learned counsel appearing for petitioner, relying on the decision of a learned single Judge of this court in George V. Federal Bank (2000(1)KLT 715) was that when the court has committed a mistake without considering the future rate of interest payable for the decree amount, it can be corrected under Section 152 of the Code of Civil Procedure and the judgment shows that the rate of interest payable was not specifically considered by the learned Sub Judge and in such circumstances, it is a mistake which is to be corrected and Ext.P2 order passed of the learned Sub Judge is to be quashed. Reliance was placed on the decision of the apex court in Ashutosh V. State of Rajasthan (2005(7) SCC 308) and it was argued that interest of 21.42 with quarterly rests is highly excessive as held by the apex court and therefore court below should have amended the decree providing future interest at 6%.

4. The learned counsel appearing for first respondent argued that the facts of the case considered

by this court in George's case (supra) was entirely different and it cannot be applied to the present case where the fact that it was a commercial transaction was not disputed and petitioner contested the suit and Sub Judge directed payment of future interest at the contract rate as it is a commercial transaction and Section 152 of Code of Civil Procedure cannot be invoked as sought for.

5. Section 152 of Code of Civil Procedure provides that clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the court either on its own motion or on an application of any of the parties. It is therefore clear that the mistake which could be corrected under Section 152 of the Code is either a clerical or arithmetical mistakes in the judgment, decree or orders or any accidental slip or omission thereon. The court is empowered to correct them either on its own motion or on the application of any of the parties. Ext.R1(a), copy of the plaint produced by first respondent shows that it was specifically pleaded in

the plaint itself that the transaction was a commercial transaction as loan was obtained for the trading purpose of the defendants and the contract rate of interest payable was 21.42% per annum with quarterly rests. Ext.R1(b) judgment shows that the fact that it is a commercial transaction was not disputed by the defendants. The learned Sub Judge did not raise any issue on the rate of interest payable, though defendants contended that interest claimed is excessive. The learned Sub Judge, after considering the respective cases, granted a decree providing future interest at the rate of 21.42% with quarterly rests. It cannot be said that the liability cast under the judgment to pay rate of interest is either the result of any accidental omission or clerical or arithmetical mistake, which can be corrected as provided under Section 152 of the Code of Civil Procedure.

6. The facts of the case in George's case was entirely different. That was a case where defendant remained exparte. In the plaint itself it was specifically contended that it was an agricultural loan. But without taking note of this fact, an exparte

decree was passed providing future interest as if it is a commercial transaction. An application under Section 152 of the Code to correct the future rate of interest was moved before the trial court. It was dismissed. That was challenged in this court. The learned Single Judge found that it was a mistake committed by the court without going through the contentions raised in the plaint. In such circumstances interest of justice warrants that the mistake is to be corrected under Section 152 of Code of Civil Procedure. That decision cannot be applied in a case where defendants with open eyes contested the suit and did not dispute the fact that it is a commercial transaction.

7. Section 34 of the Code provides future interest at 6% per annum from the date of decree provided it is not a commercial transaction. If it is a commercial transaction, interest can be awarded at the contract rate. That exactly was done by the Sub Judge. If the case of petitioner is that learned Sub Judge should not have awarded the rate of interest as claimed by the plaintiff, remedy of petitioner is to challenge the judgment by a regular appeal and not by filing an

application under Section 152. As it is neither an accidental or clerical mistake, it cannot be corrected under Section 152 of Code of Civil Procedure. Though reliance was placed on the decision of the apex court in Ashuthosh's case, those facts are also entirely different. The Supreme Court has not laid down the law that irrespective of the commercial transaction, in a suit for realisation of money, future interest cannot be granted at the contract rate. In such circumstances, the petition is dismissed.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-